IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 64 OF 1997.

1. The Deputy Collector (Rev) &
   Land Acquisition Officer,
   Collectorate (North),
   Panaji, Goa.

2. The Director of Education,
   (Adm.III), Government of Goa,
   Directorate of Education,
   18th June Road, Panaji, Goa. ... Appellants.

Versus

1. Narcinhasaraswati Vishnu
   Sinai Velingkar.

2. Atchut Vishnu Sinai Velingkar.

3. Ramakant Vishnu Sinai Velingkar.

4. Hari Yeshwant Sinai Velingkar.

5. Sadanand Atmaram Sinai Velingkar.

6. Ganpati Keshav Sinai Velingkar.

7. Sripad Keshav Sinai Velingkar.

8. Somnath Keshav Sinai Velingkar.

9. Ramanand Keshav Sinai Velingkar.

10. Premanand Keshav Sinai Velingkar.

11. Mahdeo Sripad Sinai Velingkar.

12. Vishwanath Bhalchandra Sinai
    Velingkar (since deceased)
    Through L.R.Smt. Jayashree
    M. Kantak.

13. Balkrishna Visoba Sinai
    Velingkar, all residing at
    Veling, Mardol, Goa. ... Respondents.

Shri H.R. Bharne, Government Advocate for the Appellants.

Mr. R.G. Ramani, Advocate for the Respondents No.1 to 4.

Appeal stands dismissed as against Respondents No.5, 7, 8, 9 and 11 as per Order dated 17.9.98 of Addl. Registrar.

CORAM: N.A. BRITTO, J.

DATE: 23RD MARCH, 2004.

ORAL JUDGMENT:

The State of Goa through its L.A.O. and Director of Education, Panaji, has filed the present appeal against the Judgment and Award of the Reference Court dated 6.1.1997.

2. Briefly stated, the Government of Goa by Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published in the Government Gazette dated 28.5.1987 acquired 1325 sq. metres of the land of the respondents, of Survey No.1/4 of Veling village in Ponda Taluka for the construction of a school building of four rooms, and by Award dated 11.9.89 awarded to the respondents compensation at the rate of Rs.18/- per sq.m. and the respondents before the Reference Court sought for enhancement at the rate of Rs.146/- per sq.m., and the Reference Court by relying on a Sale Deed dated 19.6.86-Exh.AW/A enhanced the compensation to Rs.61/- per sq.m., and, the appellants have now approached this Court in the present appeal against the award of

the said compensation at the rate of Rs.61/- per sq.m.

3. At the time of hearing of the arguments, learned Advocate Shri Ramani on behalf of the Respondents has submitted that this appeal was dismissed against respondent Nos.5, 7 to 11 by Order dated 17.9.98 and therefore the said respondents against whom the appeal was dismissed would be entitled to receive compensation at the rate of Rs.61/- per sq.m. and being so, the present contesting respondents cannot be allowed to have the compensation at a lower rate. Learned Advocate Shri Ramani in support of his submission has placed reliance on the case of **Jalandhar Improvement Trust v. State of Punjab and others** [(2003) 1 S.C.C., 526].

4. On the other hand, learned Government Advocate Shri Bharne has submitted that the respondents against whom the present appeal was dismissed would be entitled to proportionate reduction of compensation which would be fixed in the present appeal. Learned Government Advocate Shri Bharne has placed reliance in support of his submission on the case of **A. Viswanatha Pillai and others v. Special Tahsildar for Land Acquisition No.IV and others**

(A.I.R. 1991 S.C. 1966) and **Sardar Amarjit Singh Kalra (dead) by LRS and others v. Pramod Gupta (Smt)(dead) by LRS. and others** (2003) 3 S.C.C., 272.

5. In the case of **A. Viswanatha Pillai** (supra) the question for decision was whether in a reference sought for by one of the co-owners, the other co-owners who did not expressly seek reference, were entitled to enhanced compensation pro rata as per their shares and the Hon'ble Supreme Court observed that it is settled law that one of the co-owners can file a suit and recover the property against strangers and the decree would enure to all the co-owners. The Hon'ble Supreme Court further observed that it is equally settled law that no co-owner has a definite right, title and interest in any particular item or a portion thereof. On the other hand he has right, title and interest in every part and parcel of the joint property or coparcenary under Hindu Law by all the coparceners. The Hon'ble Supreme Court also observed that a co-owner is as much an owner of the entire property as a sole owner of the property. It is not correct to say that a co-owner's property was not its own. He owns several parts of the composite property along with others and it cannot be said that he is only a part owner or a fractional owner in the property. Therefore, a

co-owner of the property is an owner of the property acquired but entitled to receive compensation pro rata. The State would plead no waiver nor omission by other co-owners to seek reference nor disentitled them to an award to the extent of their legal entitlement when in law they are entitled to. Since the acquired property being the ancestral coparcenary and had continued to be kept in common among the brothers and the income derived therefrom was being shared in proportion of their shares by all the brothers it remained as joint property. As co-owners everyone is entitled to 1/4 share therein. The Hon'ble Supreme Court further observed that when one of the co-owners or coparceners made a statement in his reference application that himself and his brothers are dissatisfied with the award made by the Collector and that they are entitled to higher compensation, it would be clear that he was making a request, though not expressly stated so but by necessary implication that he was acting on his behalf and on behalf of his other co-owners or coparceners and was seeking a reference on behalf of other co-owners as well. What was acquired was their totality of right, title and interest in the acquired property and when the reference was made in respect thereof under Section 18 they are equally entitled to receive compensation pro rata as per their shares.

The Courts below committed manifest error in refusing to pass an award and payment thereof to the appellants merely on the ground that there was no mention in this regard in the reference application or two of them sought reference in respect of two awards and the last one made no attempt in their behalf. The Hon'ble Supreme Court held that the claimants were entitled to payment of the enhanced award by the Civil Court pro rata of their 1/4 share each with 15 per cent solatium and 4 per cent interest as awarded by the Civil Court." In my opinion this decision is of no assistance to the case of the appellants on the facts of this case.

6. In the case of **Sardar Amarjit Singh Kalra** (supra) the Hon'ble Supreme Court observed as follows:-

> " Wherever, however, the plaintiffs or appellants or petitioners are found to have distinct, separate and independent rights of their own and for the purpose of convenience or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as the combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree. The same would be the position in the case of defendants or respondents having

similar rights contesting the claims against them."

7. On the other hand, the Hon'ble Supreme Court in the case of **Jalandhar Improvement Trust** (supra) after taking note of the case of **Viswanatha Pillai v. Special Tahsildar for Land Acquisition** (supra) observed that:-

> " Having regard to the view we propose to take and the manner of disposal intended to be given, it is unnecessary for us to even advert to the relevance or applicability of Section 28-A of the Act to the case of the nature before us. The 4th respondent indisputably is a co-owner along with her children who were added as Petitioners 2 to 5 to the award dated 5-2-1986, in which case, even on the first principles of law one co-owner is entitled to have the benefit of the enhanced compensation given in respect of the other co-owners in a reference made at his instance in respect of the land acquired, which belonged to all of them, jointly. So far as the fact that in this case the 4th respondent's application for reference under Section 18 was rejected by the Tribunal ultimately on the ground that the reference was made on a belated application, does not make any difference and, is no reason, in our view, to differentiate the claims of such co-owners whose claims came to be really sustained and that of the 4th respondent, for differential treatment. We are fortified to some extent in the view expressed above, by the principles laid down by the Court in the decision reported in A. Viswanatha Pillai v. Special Tahsildar for Land Acquisition. "

8. Admittedly, the present appeal stands dismissed as against respondents No.5, 7 to 9 and 11 and as far as the judgment/order as against them has become final. By no stretch of imagination it can be said that their shares could be reduced without hearing them when they have been held entitled to compensation at the rate of Rs.65/- per sq.m. In other words the rate awarded to them cannot be reudced without hearing them, and if they are entitled to Rs.65/- per sq.m. there is no reason why the respondents Nos.1 to 4, 10, 12 and 13 should be deprived of the same compensation. As held by the Hon'ble Supreme Court in the case of Jalandhar Improvement Trust (supra) the respondent Nos.1 to 4, 12 and 13 cannot be given differential treatment and they deserved to be given the same compensation which the remaining respondents are entitled to, the judgment and award as against them having become final and binding on the appellants.

9. The learned Reference Court has taken as guide the Sale Deed dated 19.6.86 - Exh.P-8/A of a plot of land admeasuring 320 sq.m. which was sold at Rs.145/- per sq.m. and which situated at a distance of about 1-1/2 km. from the acquired property and after making deductions of 1/3 towards development, 10% towards gradient, 10% for conversion, 10% on

account of distance and 10% for being away from the National Highway and another 10% for being away from the market, has fixed the compensation payable at Rs.106.33 per sq.m. The learned Reference Court taking an addition of 10% by way of increase of price and another 5%, the acquired property being situated in a populated area, has fixed the compensation payable at Rs.61/- per sq.m.

10. Learned Government Advocate Shri Bharne has placed reliance on the case of **Periyar and Pareekanni Rubbers Ltd. v. State of Kerala** (1991) 4 S.C.C., 195 regarding the tests which are required to be followed in determining the market value. In this case the Hon'ble Supreme Court has observed that:-

> " The guiding star would be the conduct of a hypothetical willing vendor who would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions as on the date of the notification under Section 4(1) but not an anxious buyer dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value.
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> When the courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales

> of the neighbouring lands. The transaction relating to the acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of the sale are to be looked into."

11. Learned Government Advocate Shri Bharne has also placed reliance on the case of **Land Acquisition Officer & Sub-Collector, Gadwal v. Sreelatha Bhoopal (Smt) and Another** (1997) 9 S.C.C., 628 in support of the proposition that the burden is on the claimant to prove by adducing acceptable evidence for higher compensation and that the award of the L.A.O. though is not evidence stricto sensu could be looked into with a view to do substantial justice between the parties.

12. The first submission of learned Government Advocate Shri Bharne is that the reference court has not considered the acquired property is an agricultural land, to which it has been submitted by learned Advocate Shri Ramani that in this State all lands under the Land Revenue Code 1968 have been classified as agricultural lands. In my opinion all the submissions of learned Govt. Advocate Shri Bharne cannot be accepted. There is no dispute that

the Sale Deed dated 19.9.86 (Exh.AW1/A) was of a developed plot and the acquired property technically was agricultural land but the learned Reference Court has taken into consideration suitable deductions which would be required to be taken into account to convert the agricultural land into a building site.

13. Next Shri Bharne has submitted that 15% appreciation ought not to be given because the area was not a fast developing area. This submission also cannot be accepted because the learned Reference Court has taken note of the fact that the acquired property was situated in a residential or populous area. Learned Advocate Shri Bharne has next submitted that 10% increase in price also ought not to have been given but on this aspect learned Advocate Shri Ramani has placed reliance on the case of **Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamalamma (Smt) dead by LRS and others (1998)** 2 S.C.C., 385 wherein the Hon'ble Supreme Court has observed:- "The general trend in the prices of land is on the rise and the judicial notice of the same had been taken by the High Court correctly and therefore, could not be challenged.". It is now a normal practice to give appreciation of 10% on account of yearly increase in land prices.

14. Next learned Govt. Advocate Shri Bharne has referred to the report of AW.3 Shri Dessai at Exh.AW3/A and has submitted that the Reference Court has not taken into account the sale instances mentioned therein of Plot No.24 admeasuring 421 sq.m. which was sold on 24.3.86 for Rs.90/- per sq.m. and Plot No.12 admeasuring 310 sq.m. which was sold on 16.12.1985 again for Rs.90/- per sq.m. In reply it has been submitted by learned Advocate Shri Ramani that there is absolutely no foundation in cross-examination of AW.3 Shri Dessai regarding the Sale Deeds dated 24,3,86 and 16.12.85 mentioned in the said report and if at all the said Shri Dessai had referred to the sale Sale Deeds, it was only to show that in the next financial year or so the prices in the locality had increased from Rs.90/- to Rs.145/- per sq.m. Learned Advocate Shri Ramani has further submitted that it was necessary for the appellants to have brought in the cross-examination of AW.2 Shri Dessai as to why he had chosen the Sale Deed dated 19.6.86 in preference to the Sale Deeds dated 24.3.86 and 16.12.85. In my opinion, the learned Reference Court was justified in ignoring the said two Sale Deeds mentioned by AW.3 Shri Dessai in his report (Exh.AW3/A) in the absence of any foundation in cross-examination regarding the said Sale Deeds. In fact, the report of Shri Dessai

(AW.3) itself was not accepted by the Reference Court in its totality. The next submission of learned Govt. Advocate Shri Bharne is that the acquired property could not be compared with the plot of the Sale Deeds (Exh.AW1/A) because the acquired property was close to the interior road while the plot of the sale deeds was close to the National Highway. In my opinion this submission also cannot be accepted because the learned Reference Court has considered this factor and has made a reduction of 10%.

15. The next submission of Shri Bharne is that the learned Reference Court ought to have deducted at least 40% towards development. Learned Advocate Shri Ramani has made a grievance that the learned Reference Court has made deductions towards development twice. First by taking a deduction of 1/3 and then again for conversion further deduction of 10% has been taken which deduction could have been included in the said 1/3 taken towards development. In my opinion the learned Advocate Shri Ramani is quite right but can take no advantage of the situation. The Hon'ble Supreme Court in the case of **Basavva (Smt) and others v. Spl. Land Acquisition Officer and others** (1996) 9 S.C.C., 640 relied upon by Shri Bharne has stated that for developmental charges a deduction between 33-1/3 to 53% was held to

be valid by the Court in several judgments and in the case of **Vasundara Devi** case (1995) 5 SCC 426 63% deduction was upheld. The Hon'ble Supreme Court then proceeded to observe that the fact that the development of land would have taken years, the High Court had deducted another 12% i.e. 53 + 12% = 65% and the principle adopted by the High Court was held as not illegal. The deduction towards development depends on the facts of each case and there cannot be any rule of universal application Considering that the acquired plot in this case was situated in a populous locality and was otherwise suitable for construction with water and electricity facilities being available, the deduction of 1/3 + 10% towards conversion charges (more than 43%) could not be stated to be on the lower side.

16. In my opinion, the learned Reference Court has rightly used the sale deed dated 19.6.86 (Exh.AW1/A) as a guide for fixing the compensation payable to the respondents and after necessary deductions and additions has rightly fixed the compensation payable to the respondents at the rate of Rs.61/- per sq.m.

17. I find no scope for interference with the Judgment/Award of the learned Reference Court. The

appeal, therefore, is hereby dismissed, however with no order as to costs.

N. A. BRITTO, J.

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